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chattels is specific performance of an agreement containing both affirmative and negative covenants, a court of equity cannot interfere by injunction to prevent the breach of a negative covenant, unless it appears that the complainant has no adequate remedy at law.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. §§ 111-113; Dec. Dig. § 38.* 7 Va.-W. Va. Enc. Dig. 521; 14 Va.-W. Va. Enc. Dig. 540; 15 Va.-W. Va. Enc. Dig. 490.]

2. Injunction (§ 58*)—Specific Performance—Negative Covenants.—An injunction will not be granted to restrain a defendant from violating negative covenants when the agreement is of such a nature that it cannot be specifically enforced, where specific performance is the object of the suit.

[Ed. Note.—For other cases, see Injunction, Cent. Dig. §§ 111-113; Dec. Dig. § 58.* 7 Va.-W. Va. Enc. Dig. 590; 14 Va.-W. Va. Enc. Dig. 548; 15 Va.-W. Va. Enc. Dig. 499.]

3. Damages (§ 23*)—Contemplated Consequences.—Under an agreement for the sale of monotype machines, wherein defendant covenanted to use the machines until a certain date, and no other machines, and to operate them to their greatest efficiency, the plaintiff is not entitled to damages, due to defendant's almost immediate rejection of the machines, either at law or equity, to his business on account of any disrepute the act might bring to the machines; nothing being said in the agreement in regard to any such result, and such damages being uncertain, not proximate, and not possible to have entered into the contemplation of the parties.

[Ed. Note.—For other cases, see Damages, Cent. Dig. §§ 58, 62; Dec. Dig. § 23.* 4 Va.-W. Va. Enc. Dig. 173; 14 Va.-W. Va. Enc. Dig. 302; 15 Va.-W. Va. Enc. Dig. 251.]

Appeal from Law and Equity Court of City of Richmond.

Bill by the Lanston Monotype Machine Company to enjoin the Times-Dispatch Company from removing machines from its building. From a decree dismissing the bill, the plaintiff appeals. Affirmed.

LEMONS *v.* HARRIS *et*

Jan. 15, 1914.

[80 S. E. 740.]

1. Appeal and Error (§ 839*)—Review—Setting Aside Verdict—Record.—Though the sole ground relied on by one moving to set aside a verdict was the permitting of counsel to refer in argument to a section of the Code, yet it not appearing what reasons may

*For other cases, see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

have controlled the court's action, the granting of the motion cannot be reviewed in the absence of the evidence.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2915, 3278, 3279, 3280, 3286-3288, 3290-3293, 3297-3300, 3377; Dec. Dig. § 839.* 1 Va.-W. Va. Enc. Dig. 538; 14 Va.-W. Va. Enc. Dig. 84; 15 Va.-W. Va. Enc. Dig. 60.]

2. Trial (§ 118*)—Argument of Counsel—Reference to Code.—Counsel should not be permitted in argument to refer to a section of the Code having no bearing on the case; it being calculated to mislead.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 290-293; Dec. Dig. § 118.* 1 Va.-W. Va. Enc. Dig. 715; 14 Va.-W. Va. Enc. Dig. 119; 15 Va.-W. Va. Enc. Dig. 83.]

3. Marriage (§ 3*)—Free Negroes.—Marriage of free negroes prior to Act Feb. 27, 1866 (Acts 1865-66, c. 18), the first marriage law of Virginia contemplating or including negroes, were governed by the common law.

[Ed. Note.—For other cases, see Marriage, Cent. Dig. §§ 3, 23; Dec. Dig. § 3.* 9 Va.-W. Va. Enc. Dig. 574.]

4. Marriage (§ 9*)—Slaves.—Marriages of slaves were void.

[Ed. Note.—For other cases, see Marriage, Cent. Dig. § 27; Dec. Dig. § 9.* 9 Va.-W. Va. Enc. Dig. 574.]

5. Marriage (§ 16*)—Negroes—Statutes.—Under Act Feb. 27, 1866 (Acts 1865-66, c. 18), providing that, where colored persons had cohabited as husband and wife, and at such date were so cohabiting, they should be deemed husband and wife, and their children, whether born theretofore or thereafter, should be legitimate, and likewise their children, if recognized by the man, though the cohabitation had then ceased, it is unnecessary that there should have been an agreement, in terms, that the parties take one another as husband and wife.

[Ed. Note.—For other cases, see Marriage, Cent. Dig. § 7; Dec. Dig. § 16.* 9 Va.-W. Va. Enc. Dig. 574.]

6. Jury (§ 71*)—Special Jury—Discretion.—Granting or refusing a special jury is a matter resting in the sound discretion of the court.

[Ed. Note.—For other cases, see Jury, Cent. Dig. §§ 368-379; Dec. Dig. § 71.* 9 Va.-W. Va. Enc. Dig. 6; 14 Va.-W. Va. Enc. Dig. 624; 15 Va.-W. Va. Enc. Dig. 588.]

7. New Trial (§ 161*)—Costs of Former Trial—Payment.—The statute is satisfied by the costs of the former trial being paid before the new trial, so that motion to set aside an order for new trial need not be granted because the costs are not paid at the time of the motion.

[Ed. Note.—For other cases, see New Trial, Cent. Dig. §§ 321-

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

323; Dec. Dig. § 161.* 10 Va.-W. Va. Enc. Dig. 469; 14 Va.-W. Va. Enc. Dig. 785.]

8. Trial (§ 52*)—Instructions.—The controlling question being whether or not the parents of plaintiff come within Act Feb. 27, 1866 (Acts 185-66, c. 18), declaring, under certain circumstances, negroes to be husband and wife, and their children legitimate, it was not only proper but essential to instruct the jury on that phase of the case.

[Ed. Note.—For other cases, see Trial, Cent. Dig. §§ 124, 126-129; Dec. Dig. § 52.* 7 Va.-W. Va. Enc. Dig. 704; 14 Va.-W. Va. Enc. Dig. 562; 15 Va.-W. Va. Enc. Dig. 510.]

9. Evidence (§ 293*)—Pedigree Declarations—Competent Declarants.—Only those connected with the family by blood or marriage are competent declarants on the question of pedigree.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1152; Dec. Dig. § 293.* 7 Va.-W. Va. Enc. Dig. 53; 14 Va.-W. Va. Enc. Dig. 506.]

10. Evidence (§ 292*)—Pedigree Declarations—Persons Living.—Pedigree declarations of one living are not admissible; he being subject to examination as a witness.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. § 1151; Dec. Dig. § 292.* 7 Va.-W. Va. Enc. Dig. 54; 14 Va.-W. Va. Enc. Dig. 506.]

Error to Circuit Court, York County.

Action by Harriet Lemons against A. A. Harris and another. Judgment for defendants, and plaintiff brings error. Reversed and remanded for new trial.

Jones & Woodward, of Hampton, and *Sidney Smith*, of Norfolk, for plaintiff in error.

J. Thomas Newsome, of Newport News, and *C. H. Shields*, of Yorktown, for defendants in error.

GAYLE & EASON v. COMMONWEALTH.

Jan. 15, 1914.

[80 S. E. 741.]

1. Intoxicating Liquors (§ 231*)—Certificate of State Chemist—Cider—Evidence.—Under section 24 of Act of March 12, 1908 (Code Supp. 1910, p. 780), providing that in prosecutions under such act, section 14 of which prohibits the sale of cider containing more than 6 per cent. of alcohol in local option territory without a license, a certificate showing the analysis of the cider is admissible in evi-

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